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OFFICE OF PETITIONS

In re Patent No. 7,371,872	:	
MOHER et al.	:	DECISION ON REQUEST FOR
Issue Date: May 13, 2008	:	RECONSIDERATION OF PATENT
Application No. 10/516,559	:	TERM ADJUSTMENT and
Filed: November 30, 2004	:	NOTICE OF INTENT TO ISSUE
Attorney Docket No. X-14978M	:	CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RE-CONSIDERATION OF PATENT TERM ADJUSTMENT" filed July 14, 2008. Patentees request that the Patent Term Adjustment for the above-identified patent be set at three hundred eight-one (381) days.

The request for reconsideration of the patent term adjustment indicated in the patent is GRANTED to the extent indicated herein.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of three hundred seventy (370) days.

On May 13, 2008, the above-identified application matured into U.S. Patent No. 7,371,872. The instant request for reconsideration filed July 14, 2008, was timely filed within two (2) months of the date the patent issued. See 37 CFR 1.705(d). The patent issued with a revised Patent Term Adjustment of three hundred thirty-one (331) days.

Patentees argue that there were no circumstances that constituted a failure of the applicants to engage in reasonable efforts to conclude processing or examination of the application. Specifically, patentees dispute the reduction of forty-four (44) days associated with the filing of the "Communication" received in the USPTO on March 31, 2008. Additionally, patentees disagree with the reduction of six (6) days based on the filing of the Certified Copy of the Foreign Priority Application on March 25, 2008.

The application history has been reviewed and it has been determined that the determination of patent term adjustment under 35 U.S.C. 154(b) of three hundred thirty-one (331) days is incorrect.

As to the reduction of forty-four (44) days, it is concluded that under the circumstances of this case the submission of the "Communication" on March 31, 2008, is not considered a failure to engage within the meaning of 37 CFR 1.704(c)(10). Thus, the reduction of forty-four (44) days is not warranted and is being removed.

As to the filing of the Certified Copy of the Foreign Priority Application, it is concluded that a reduction of the period of adjustment of the patent term is warranted.

37 CFR § 1.704(c)(10) provides that:

Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper;

or

(ii) Four months;

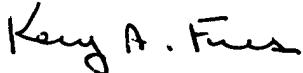
In this instance, it is undisputed that patentees filed the Certified Copy of the Foreign Priority Application after the mailing of the notice of allowance. On April 4, 2008, the Office mailed a Priority Acknowledgement, acknowledging receipt of the priority papers. Thus, the period of adjustment should have been reduced by the lesser period of eleven (11) days (not 6 days), beginning on the date the Certified Copy of the Foreign Priority Application was filed, March 25, 2008, and ending on the mailing date of the Priority Acknowledgement, April 4, 2008. Accordingly, the period of reduction of six (6) days will be removed and the period of reduction of eleven (11) days will be entered in its place.

In view thereof, the patent term adjustment indicated on the patent should be **three hundred seventy (370) days** (381 days of Office delay - 11 days of applicant delay).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by three hundred seventy (370) days.

Telephone inquiries specific to this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.



Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration

Enclosure: Copy of DRAFT Certificate of Correction

Day : Thursday
Date: 9/18/2008**PALM INTRANET**

Time: 09:58:06

PTA Calculations for Application: 10/516559

Application Filing Date:	11/30/2004	PTO Delay (PTO):	381
Issue Date of Patent:	05/13/2008	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	50
Post-Issue Petitions:	0	Total PTA (days):	370
PTO Delay Adjustment:	39		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
102	09/18/2008	ADJUSTMENT OF PTA CALCULATION BY PTO	39		
97.5	04/23/2008	PTA 36 MONTHS			
97	05/13/2008	PATENT ISSUE DATE USED IN PTA CALCULATION			
96	04/14/2008	EXPORT TO FINAL DATA CAPTURE			
95	04/10/2008	FINISHED INITIAL DATA CAPTURE			
94	04/10/2008	DISPATCH TO FDC			
93	04/04/2008	EMAIL NOTIFICATION			
90	04/04/2008	MAIL ACKNOWLEDGEMENT OF PRIORITY PAPERS-PUB			
89	03/25/2008	ACKNOWLEDGEMENT OF PRIORITY PAPERS-PUB			
88	03/25/2008	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)		6	
87	03/31/2008	MISCELLANEOUS INCOMING LETTER		44	
86	03/31/2008	RESPONSE TO REASONS FOR ALLOWANCE			
85	04/01/2008	APPLICATION IS CONSIDERED READY FOR ISSUE			
84	03/31/2008	ISSUE FEE PAYMENT VERIFIED			
83	03/31/2008	ISSUE FEE PAYMENT RECEIVED			
81	01/03/2008	ELECTRONIC REVIEW			
79	12/31/2007	MAIL NOTICE OF ALLOWANCE			
78	12/27/2007	ISSUE REVISION COMPLETED			
77	12/27/2007	DOCUMENT VERIFICATION			
76	12/26/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
75	12/26/2007	CASE DOCKETED TO EXAMINER IN GAU			
74	12/26/2007	NOTICE OF ALLOWABILITY			

73	12/05/2007	DATE FORWARDED TO EXAMINER			
72	11/27/2007	AMENDMENT AFTER FINAL REJECTION			
71	08/27/2007	MAIL FINAL REJECTION (PTOL - 326)			
70	08/20/2007	FINAL REJECTION			
69	07/02/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
68	07/02/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED	0	65	
67	07/02/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
66	07/11/2007	DATE FORWARDED TO EXAMINER			
65	07/02/2007	RESPONSE AFTER NON-FINAL ACTION			
64	05/17/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
63	05/17/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
58	08/20/2007	CASE DOCKETED TO EXAMINER IN GAU			
35	05/17/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
34	04/05/2007	ELECTRONIC REVIEW			
33	04/04/2007	EMAIL NOTIFICATION			
32	04/02/2007	MAIL NON-FINAL REJECTION			
31	03/27/2007	NON-FINAL REJECTION			
30	03/20/2007	DATE FORWARDED TO EXAMINER			
29	03/15/2007	RESPONSE TO ELECTION / RESTRICTION FILED			
28	02/17/2007	ELECTRONIC REVIEW			
27	02/16/2007	EMAIL NOTIFICATION			
26	02/15/2007	MAIL RESTRICTION REQUIREMENT	381		-1
25	02/12/2007	REQUIREMENT FOR RESTRICTION / ELECTION			
24	11/30/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
23	02/01/2007	CASE DOCKETED TO EXAMINER IN GAU			
22	11/17/2006	CASE DOCKETED TO EXAMINER IN GAU			
21	07/20/2005	MAIL OF WITRHDRAW OF INFORMAL AMENDMENT NOTICE			
19	07/20/2005	WITHDRAW OF INFORMAL AMENDMENT NOTICE			
18	07/07/2005	MISCELLANEOUS INCOMING LETTER			
15	03/04/2005	PRELIMINARY AMENDMENT			
14	06/28/2005	CLEARED BY OIPE CSR			

13	06/08/2005	MAIL NON-COMPLIANT PRELIMINARY AMENDMENT			
12	06/07/2005	NON-COMPLIANT PRELIMINARY AMENDMENT			
11	06/01/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
10	06/01/2005	CASE DOCKETED TO EXAMINER IN GAU			
8	05/23/2005	OATH OR DECLARATION FILED (INCLUDING SUPPLEMENTAL)			
7	11/30/2004	REFERENCE CAPTURE ON IDS			
6.7	11/30/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
6	11/30/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
5	11/30/2004	PRELIMINARY AMENDMENT			
4	12/11/2004	371 COMPLETION DATE			
3	05/16/2005	APPLICATION DISPATCHED FROM OIPE			
2	05/16/2005	NOTICE OF DO/EO ACCEPTANCE MAILED			
1	11/30/2004	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,371,872 B2

DATED : May 13, 2008

INVENTOR(S) : Moher et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (331) days

Delete the phrase "by 331 days" and insert – by 370 days--